United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia

No. 17,170

269

G. W. Stubblefield, Appellant

vs.

Robert Kennedy, et al., Appellees.

Appeal From Judgment of the United States District Court
for the District of Columbia

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STATEMENT OF QUESTIONS PRESENTED

The questions presented by this case are:

1. Should this Court exercise its discretion to order the release of a mandatory releasee who has been illegally arrested by the Parole Board on the basis of a fabricated charge, given an invalid hearing and illegally detained?

2. Do the Fifth or Sixth Amendments require that an indigent parolee charged with a violation of the terms of his conditional release be allowed a prompt hearing before the Parole Board in the vicinity of the alleged violation, with appointed counsel, specification of charges, confrontation and cross-examination of Board's informants, the right to examine confidential reports of the Board and compulsory process to obtain witnesses?

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No. 17,170

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JURISDICTIONAL STATEMENT

This is an appeal from a final order of the United States District Court for the District of Columbia dated May 29, 1962, granting Appellee's Motion for Summary Judgment. The court below granted appellant leave to appeal in forma pauperis on June 5, 1962. The court below had jurisdiction under the provisions of 28 U.S.C. §2201 et seq. and Sections 11-305 and 11-306 of the District of Columbia Code (1961 ed.). This Court has jurisdiction under the provisions of 28 U.S.C. §1291.

STATEMENT OF THE CASE

Appellant, George W. Stubblefield, was convicted in the United States District Court for the District of Massachusetts on April 4, 1945, sentenced to a term of 17 years and sent to the United States Penitentiary at Leavenworth, Kansas (Amended Complaint 1).

On May 11, 1956, having served the time for which he was sentenced less 2,153 days deducted for good conduct, appellant became eligible for mandatory release pursuant to 18 U.S.C. §4163 and §4164. Prior to this time, however, detainer warrants had been filed against appellant by the states of Nebraska and Massachusetts because of unsatisfied state sentences imposed upon him prior to his incarceration at Leavenworth (Amended Complaint 1).

In accordance with routine procedures, appellant had a "pre-release" conference with parole and prison officials. He maintains, however, that, because he was being transferred to state custody rather than released to liberty, he was never instructed to report to a Parole Board representative. On the contrary, appellant asserts that he was affirmatively told that

he need not be concerned about post-release procedures because he was being turned over for state confinement. He refused to sign the form statement on his certificate of conditional release acknowledging that the conditions of his release had been explained to him. (Amended Complaint 2; Appellant's Memorandum of Points and Authorities filed May 1, 1963, 3; Certificate of Conditional Release attached to Appellee's Supplemental Memorandum)

Pursuant to the detainers, appellant was transferred directly from the federal penitentiary to the county jail in Leavenworth County, Kansas, from which he was taken a few days later to a Nebraska prison. There he was confined for a period commencing about May 17, 1956, and continuing for approximately 20 months, until January 1958. He was then transferred directly to the custody of the Commonwealth of Massachusetts, where he was imprisoned for another period of about 20 months. Finally, in October 1959, three and one-half years after he had qualified under the mandatory release statutes, appellant was released to freedom for the first time since his original incarceration on April 4, 1945. (Amended Complaint 2)

After his release from the Massachusetts prison, appellant traveled to Columbus, Nebraska, where he secured regular employment in November 1959 and lived in a socially acceptable manner from that time until October 11, 1960 (Amended Complaint 2).

Appellant's freedom abruptly ended on October 11, 1960, when agents of the Federal Bureau of Investigation arrested him at his regular place of employment in Columbus, Nebraska, on a fugitive warrant based upon an indictment charging him with murder allegedly committed in East Cambridge, Massachusetts, on September 3, 1960 (Amended Complaint 2). The indictment itself was based upon the fabricated statement of an ex-convict named Edgar William Cook, who, when himself charged with the murder, implicated appellant as an accomplice. Investigation subsequently indicated that appellant, who had been a co-defendant of Cook's in a previous criminal matter, could not have been involved in this crime because he had not been in Massachusetts, but rather in Nebraska, on the date of the crime. (Amended Complaint 2; "Transcript of Hearing" attached to Appellee's Motion for Summary Judgment)

On October 17, 1960, while appellant was in custody on the fugitive warrant, two Massachusetts police agents exhibited to him a formal extradition request and advised him that even though their investigation convinced them of his innocence they would seek his extradition as a state's witness and to demonstrate the thoroughness of their investigation. These agents also warned appellant that, in order to bypass possible extradition problems, they had "influenced" the United States Attorney for Massachusetts to cause a conditional release violation warrant to be issued against him and threatened to use it in case of difficulty or delay. (Amended Complaint 3)

Appellant was served with a signed extradition order on October 19, 1960. He demanded a hearing on it. Within an hour of his demand, appellant was served with a conditional release violation warrant and immediately removed from his place of confinement in Omaha, Nebraska, and transported to the United States Penitentiary in Leavenworth, Kansas. (Amended Complaint 3) There, on October 28, 1960, he was "interviewed" by a parole officer. At this interview he was not permitted to be assisted by counsel or to produce witnesses in his own behalf. ("Mandatory Release Violator's Statement" attached to Appellee's Motion for Summary Judgment)

Subsequently, on January 23, 1961, appellant was given a so-called parole revocation "hearing" before Mrs. Eva Bowring, a member of the United States Parole Board, at the United States Penitentiary at Leavenworth, Kansas. The "hearing" lasted only a few minutes and the only persons present were appellant, the Parole Board member and a reporter, who did not take a verbatim transcript of the proceedings. Appellant was neither advised of the right to retain counsel, furnished counsel, nor allowed to be represented by counsel. Appellant did not at any time waive his right to counsel. (Amended Complaint 3, 4, 5; "Transcript of Hearing" attached to Appellee's Motion for Summary Judgment)

Appellant was not extended use of compulsory process to compel attendance of witnesses, nor was he accorded the right to present voluntary witnesses in his own behalf. Appellant's defense at this "hearing" was thus limited to answering, as best he could, questions put to him by the member of the Parole Board. Notice given him as to the time and place of the hearing merely stated that it would be "sometime during the month of January." He was also denied the right to confront and cross-examine

witnesses against him. The case against appellant consisted solely of unsworn hearsay statements. (Amended Complaint 3, 4, 5)

Parole Board Member Bowring filed a summary report in which she recited the charges against appellant and his denials. She concluded by recommending that appellant be held as a mandatory release violator. ("Transcript of Hearing" attached to Appellee's Motion for Summary Judgment) She nowhere made any specific finding of fact nor did she state the basis for her conclusion. It could only have been based upon the charge of failure to report to a parole officer, however, since there was absolutely no evidence to support the fabricated charges of murder and association with undesirable persons. (Amended Complaint 3, 4, 5; Appellant's Memorandum of Points and Authorities filed May 1, 1962, 6)

Appellant's parole was revoked on or about March 15, 1961. Acting pro se, appellant filed an affidavit of poverty in the district court and, subsequently, on May 29, 1961, filed a civil action against Attorney General Kennedy, demanding his release (Complaint). Counsel was appointed and the Complaint was amended to an action against Richard A. Chappell, Chairman,

and the other members of the Parole Board for declaratory judgment and injunctive relief (Amended Complaint).

On October 5, 1961, appellant's original sentence term less 180 days expired. On that date, but for his retaking, appellant would have been free of Parole Board supervision. (Certificate of Conditional Release attached to Appellee's Supplemental Memorandum filed May 10, 1961) His original sentence expired about April 5, 1962.

On December 22, 1961, following this Court's decision in Reed v. Butterworth, 111 U.S. App. D. C. 365, 297 F.2d 776 (D. C. Cir. 1961), appellant was offered the opportunity to have a second "hearing" before the Parole Board, and was advised of his right to be represented by counsel and to present voluntary witnesses (Certificate of Parole Officer Vance attached to Appellee's Motion for Summary Judgment). Appellant declined the proffered hearing (Amended Complaint 5).

On April 6, 1962, the Board moved for summary judgment or, in the alternative, to dismiss, on the ground that the offer of December 22, 1961, was sufficient to cure the admitted error of not advising appellant of his right to be represented by

retained counsel in the earlier hearing on January 23, 1961 (Appellee's Motion for Summary Judgment).

The cause came on for hearing before the district court on May 8, 1962, and on May 29, 1962, the district court granted the Board's Motion for Summary Judgment, holding that "no genuine issue as to any material fact exists and the defendant is entitled to judgment as a matter of law."

On June 5, 1962, the district court granted Appellant's Application for Leave to Proceed on Appeal in forma pauperis.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

United States Constitution, Amendment V:

> "[N]or shall any person . . . be deprived of life, liberty or property without due process of law . . . ."

United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Act of June 25, 1948, C. 645, 62 Stat. 854, 18 U.S.C. §4203:

> "(a) If it appears to the Board of Parole from a report by the proper institutional officers or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the laws, and if in the opinion of the Board such release is not incompatible with the welfare of society, the Board may in its discretion authorize the release of such prisoner on parole.
>
> Such parolee shall be allowed in the discretion of the Board, to return to his home, or to go elsewhere, upon such terms and conditions, including personal reports from such paroled person, as the Board shall prescribe, and to remain, while on parole, in the legal custody and under the control of the Attorney

General, until the expiration of the maximum term or terms for which he was sentenced.

Each order of parole shall fix the limits of the parolee's residence which may be changed in the discretion of the Board.

(b) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law."

Act of June 25, 1948, c. 645, 62 Stat. 854, 18 U.S.C. §4205:

"A warrant for the retaking of any United States prisoner who has violated his parole, may be issued only by the Board of Parole or a member thereof and within the maximum term or terms for which he was sentenced. The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve."

Act of June 25, 1948, c. 645, 62 Stat. 855, 18 U.S.C. §4207:

"A prisoner retaken upon a warrant issued by the Board of Parole, shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board."

28 C.F.R. §2.39 (1949):

"At the next meeting of the Board of Parole after the issuance of a warrant for the retaking of any paroled prisoner, the Board shall be notified thereof, and if the prisoner named shall have been returned to prison, he shall be given an opportunity to appear before the Board . . . ."

STATEMENT OF POINTS

The District Court erred in granting Appellee's Motion for Summary Judgment, since appellant is being illegally incarcerated as the result of an illegal arrest and retaking and a void parole revocation hearing.

SUMMARY OF ARGUMENT

I. Appellant Should be Released Because He was not Accorded a Valid Hearing and, in the Extreme Circumstances of This Case, the Invalidity was Critical to a Grievously Unjust Result.

Relevant decisions uniformly entitle a parolee to be represented by counsel and present evidence at a parole revocation hearing. This Court's recent decision in Hyser v. Reed, U. S. App. D.C. , F.2d (D.C. Cir. 1963), also gives parolees certain other rights relevant to arrest warrants and preliminary hearings. Appellant was retaken and his parole revoked without those rights. Therefore the revocation was invalid, and, as this Court held in Hyser v. Reed, supra, the invalidity was not cured by the subsequent offer, 14 months after appellant's arrest, of a new hearing with some of those rights.

Appellant's arrest was procured by a fabricated charge of murder. His subsequent parole revocation hinged on a complex and technical legal situation which demanded the skilled analysis of a lawyer. The extreme circumstances of his arrest and the critical importance of his not having counsel resulted in a

grievously unjust revocation. In such circumstances, release of appellant is the appropriate remedy.

II. Appellant Should Be Released Since His Parole was Illegally Revoked and, His Original Sentence now Having Expired, the Parole Board is Without Jurisdiction.

Appellant's original sentence expired on April 5, 1962. Had he been at liberty then, the Board's jurisdiction would have ended. The Board's action is a nullity because it had no power to revoke appellant's mandatory release without permitting him to "appear" within the meaning of the statute. Therefore, appellant's mandatory release was never revoked, his sentence has expired and he is entitled to be released.

III. Any Relief Short of Release Would Deprive Appellant of His Constitutional and Statutory Rights.

The relevant statute (18 U.S.C. §4207) requires that a parolee be given an opportunity to appear (with retained counsel and the opportunity to present witnesses) at a revocation hearing. Appellant has filed an affidavit of poverty and therefore, if his case were remanded for possible rehearing, he could not avail himself of the right to appear by counsel. Thus,

unlike a parolee with funds, he would not be able effectively to present his case. This is so inequitable as to deny appellant due process. The acceptable alternative is to set free those who have been deprived of a fair hearing.

ARGUMENT

I. Appellant Should be Released Because He was not Accorded a Valid Hearing and, in the Extreme Circumstances of This Case, the Invalidity was Critical to a Grievously Unjust Result.

A. The Hearing Was Invalid.

This Court's recent decision in Hyser v. Reed and consolidated cases, U.S. App. D.C. , F.2d (D. C. Cir. 1963), holds that, so long as a parolee has not admitted violation of the parole conditions or been convicted of a crime while on parole, he is entitled to produce voluntary witnesses and be assisted by counsel at a preliminary interview to be held reasonably promptly after his arrest near the place of the alleged violation, and to a determination at this point whether there was satisfactory evidence for issuance of the warrant. The Hyser decision also reaffirms the holdings in Glenn v. Reed, 110 U.S. App. D. C. 85, 289 F.2d 462 (D.C. Cir. 1961); Reed v. Butterworth, 111 U.S. App. D. C. 365, 297 F.2d 776 (D.C. Cir. 1961); Barnes v. Reed, U. S. App. D. C. , 301 F.2d 516 (D.C. Cir. 1962); and Robbins v. Reed, 106 U.S. App. D. C. 51,

269 F.2d 242 (D. C. Cir. 1959), that a parolee has the right under 18 U.S.C. §4207 [1/] to be represented by counsel and to present witnesses in his own behalf at a parole revocation hearing. Two other cases, Fleming v. Tate, 81 U. S. App. D. C. 205, 156 F.2d 848 (D.C. Cir. 1946) and Moore v. Reid, 106 U. S. App. D. C. 373, 246 F.2d 654 (D.C. Cir. 1957), have construed an identical District of Columbia statute to require an opportunity for an effective appearance, including presence of counsel, if desired by the parolee, and receipt of testimony if he has testimony to present.

It is undisputed that the appellant in the instant case was given a preliminary interview at the United States Penitentiary at Leavenworth, Kansas, some two hundred miles

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1/ A prisoner retaken upon a warrant issued by the Board of Parole, shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board.

The Board may then, or at any time in its discretion, revoke the order of parole and terminate such parole or modify the terms and conditions thereof.

If such order of parole shall be revoked and the parole so terminated, the said prisoner may be required to serve all or any part of the remainder of the term for which he was sentenced.

from the place of his arrest and some 1,400 miles from the place of the alleged parole violation, without the opportunity to be represented by counsel or to present witnesses in his own behalf. It is also undisputed that appellant was given a "hearing" before a member of the Parole Board, also at the United States Penitentiary at Leavenworth, Kansas, at which he was deprived of the right to counsel and to present evidence in his own behalf. Thus he was deprived of the rights to which this Court has held he was entitled.

Appellant has done nothing to forfeit those procedural rights. He has not admitted violation of his parole conditions -- indeed he has strenuously denied any such violation -- nor has he been convicted of a crime while on parole. Therefore, since he was not afforded the rights to which he was entitled under the relevant statute (18 U.S.C. §4207) as authoritatively construed by the cases cited above, appellant's parole revocation hearing was clearly invalid.

B. The Invalidity of the Hearing Was not Cured by the Parole Board's Belated Offer of a New Hearing.

The fact that appellant was subsequently offered a new parole revocation hearing at which he could be represented by retained counsel and present voluntary witnesses in his own behalf did not cure the invalidity of the original hearing.

Appellant was arrested on a parole violation warrant on October 19, 1960. The offer of a new hearing was made over 14 months later, on December 22, 1961. Meanwhile, on May 29, 1961, seven months before the offer, appellant had filed this action in the district court. In view of this Court's clear holding in Hyser v. Reed, p. 38 of slip opinion, that those similarly-situated appellants should not be penalized for having refused the type of hearing proffered by the Parole Board, it is unnecessary to belabor the deficiencies of the Board's proffer to appellant in terms of promptness, location and the other elements of a fair hearing. Obviously, a hearing 14 months after the alleged violation, to be held at Leavenworth, Kansas, some 200 air miles from the place of parolee's arrest (Columbus, Nebraska) and some 1,400 air miles from the place of

the alleged violation (East Cambridge, Massachusetts) would deprive this indigent parolee -- in any practical sense -- of the right to be represented by counsel and present evidence on his own behalf. Glenn v. Reed, supra, and Barnes v. Reed, supra, also clearly hold that the procedural defects of an original hearing are not made good by the offer of a new hearing many months later.

C. The Invalidity of the Hearing Was Critical to a Grievously Unjust Result.

In extreme cases, where the denial of fundamental procedural safeguards has been critical to the result of a parole revocation hearing and has caused grievous injustice, 2/

2/ It is true that this Court found that two of the appellants in the Hyser group who had not denied the parole violation charges -- Whitling and Jamison -- had been denied a fair hearing, but merely remanded them to the district court for further relief. The distinction here, however, is that this Court is able to perceive on the face of this record the critical importance to the present appellant of legal representation in the Board proceeding and the grievous injustice that has resulted from its lack.

this Court has exercised its discretion to order the immediate release of the parolee. Glenn v. Reed, supra; Moore v. Reid, supra. And see Reed v. Butterworth, supra.

Recently, this Court once again recognized the propriety of direct action at the appellate level in extreme cases. In Hyser v. Reed, supra (slip opinion at 25), it reiterated the rule in Moore v. Reid, supra, in these words:

> As a practical matter we think that in cases where the parolee disputes the acts or conduct relied upon as a parole violation, the question whether there is evidence to support Parole Board action can in the extreme cases be dealt with on judicial review notwithstanding the relatively narrow scope of that review. (Emphasis supplied)

Appellant contends that this is such an extreme case: that the fact that the procuring cause of his arrest was a fabricated charge of murder (of which, along with the companion charge of associating with a person having a criminal background, there is not a shred of evidence in this record or elsewhere) so colored the Parole Board "hearing" that the obviously inept member[3/] conducting it was unable properly to assess the single

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3/ The member's lack of skill and understanding is well illustrated by the rather incoherent document in the record inaccurately referred to as "Transcript of Hearing," in which she obliquely mentions several allegations and defenses, but gives no indication of the rationale of her recommendation that appellant be held as a mandatory release violator.

issue which should have been considered: whether appellant was obligated to report for supervision under the conditions of his "release" (i.e., to three and one-half years of state confinement) and, if so, whether his failure to report because of understandable confusion was sufficient cause for revocation of his parole.

When appellant's situation is placed into context with pertinent decisions in which this Court has ordered the release of parolees retaken under similar circumstances, it becomes obvious that he should be released.

In Moore v. Reid, supra, a mandatory releasee was retaken and charged with violating his release conditions by associating with improper persons. Moore had adopted a younger prisoner while in prison; the alleged association after his mandatory release consisted of writing to the adopted son in prison -- which was alleged to be association with a person having a criminal background. The court noted that Moore had not understood the authority of the Parole Board or the nature of the proceedings, and had not been advised of his right to be represented by retained counsel. In these circumstances, the lack of counsel "loom[ed] so large" that it became "critical."

In ordering Moore discharged, the court said:

> If ever a lawyer were needed, it would seem that this appellant needed one.
>
> * * *
>
> . . . [H]ad there been counsel at the "hearing" before the Examiner, much could have been said and done to insure the Board's complete understanding of the problem. Thus the lack of counsel in this setting became critical. 246 F.2d at 657, 659. (Emphasis supplied) 4/

In Glenn v. Reed, supra, this Court exercised its discretion to order a prisoner's release when it found that, in the particular circumstances, this was the only meaningful relief. In Glenn a parolee was arrested on a fabricated charge made by a "jealous woman" and his parole revoked after a "hearing" at which he was not allowed counsel. Taking notice of the extreme facts, this Court ordered Glenn's release and held that any further arrest and revocation proceedings of the board must be entirely de novo.

4/ Moore v. Reid involved a parole revocation hearing pursuant to §24-206 D.C. Code, a section almost identical to 18 U.S.C. §4207. This Court has held that Congress had the same intent when writing both statutes. Robbins v. Reed, supra.

> On these facts, together with the admittedly invalid hearing, we think we should exercise our discretion to order appellant's release. The Board will thus be required to make a new decision whether to issue a warrant of arrest, taking into account the original charge, the alleged recantation, and any other information whenever acquired, which the Board has before it. It is to issue this new decision as to an arrest that we order appellant's release. (289 F.2d at 263)

The facts of the present case are just as extreme as the two cited cases. The circumstances of the arrest are similar to Glenn; the acute need for counsel in a difficult legal situation is like Moore.

It is clear that the basis for appellant's arrest was the fabricated charge of Edgar William Cook, who, when himself charged with murder alleged committed in Massachusetts on September 3, 1960, falsely implicated appellant. This charge (and also the related "association" charge) evaporated when investigation revealed that appellant had been in Nebraska rather than Massachusetts at the time of the crime. Indeed, there is no evidence anywhere in this record which could possibly substantiate these charges.

When parole authorities discovered that the initial basis for appellant's arrest was fabricated, they chose to fall

back on a technical complication which they had failed to clarify, and indeed to which they had contributed confusion. Appellant had been mandatorily released on May 11, 1956, from Leavenworth penitentiary for transfer to a Nebraska prison. At the time of his release, he was given no instructions to report to federal parole officers, because he was being released under state detainers to serve time on unsatisfied state sentences. Indeed, appellant asserts that he was affirmatively led to believe he need not report. Then, after a term of 20 months in a Nebraska prison and a subsequent 20 months in a Massachusetts prison, appellant was released to conditional freedom on October 14, 1959 -- three and one-half years after his mandatory release from Leavenworth. During that period appellant obviously could not and did not report to a federal parole officer since he was incarcerated in state prisons during that time. Upon his release from the Massachusetts state prison, appellant was not instructed to report to a federal parole officer, he did not understand that he was supposed to report and did not report between his release from Massachusetts prison on October 14, 1959, and his arrest in Columbus, Nebraska, on October 11, 1960.

As in Moore v. Reid, supra, the appellant here was in ignorance and confusion about the authority and jurisdiction of the Parole Board and about his own rights and duties. In this Court's words, "if ever a lawyer were needed," one was needed by appellant at his parole revocation hearing. A lawyer would have been able to grasp the peculiar and extreme circumstances of this case, and would have aided the Board member in correctly assessing the facts and law. A lawyer would have vigorously asserted the Parole Board's waiver of the reporting condition by reason of confused and contradictory instructions given by the parole officer in the "pre-release conference." Cf. Clark v. Surprenant, 94 F.2d 969 (9th Cir. 1938)

II. Appellant Should Be Released Since His Parole was Illegally Revoked and, His Original Sentence now Having Expired, the Parole Board is Without Jurisdiction.

There is another, independent reason why appellant must be released rather than remanded for a possible new Parole Board revocation hearing as was done in the Whiting and Jamison cases under the Hyser v. Reed decision: on April 5, 1962, appellant completed serving his full sentence and the Board's jurisdiction over him terminated.

Had appellant still been at liberty on April 5, 1962, he would have earned his complete freedom (indeed, the Parole Board's actual supervision, according to the terms of his Conditional Release Certificate, would have expired 180 days prior to that time -- on October 5, 1961). The language of the statutes so providing is so clear as to leave no room for dispute:

> Such parolee shall . . . remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced. (Emphasis supplied) (18 U.S.C. §4203)

> A warrant for the retaking of any United States prisoner who has violated his parole, may be issued only . . . within the maximum term or terms for which he was sentenced. (Emphasis supplied) (18 U.S.C. §4205)

This limitation on the Board's power to act could only be lifted if the Board had validly arrested appellant and revoked his mandatory release prior to the expiration of his term. Indeed, the issuance of a valid warrant prior to the expiration of a parolee's term does not, under ordinary circumstances, halt the expiration of the sentence, and subsequent revocation by the Board pursuant to such warrant is nugatory.

Clark v. Surprenant, 94 F.2d 969 (9th Cir. 1938)[5/]

There is no doubt under this Court's clear holdings that appellant has been deprived of his statutory rights and that, without having given him those rights, the Board had no discretion to revoke his parole.

In Fleming v. Tate, supra, this Court held that the statutory phrase "shall be given an opportunity to appear before the Board" in §24-206, D. C. Code, which is the same as the language of 18 U.S.C. §4207, gives the parolee the procedural rights to appear with counsel and present testimony. And in Robbins v. Reed, 106 U.S. App. D. C. 51, 269 F.2d 242, 244 (D. C. Cir. 1959), this Court held that ". . . when revocation ensues upon a failure to comply with statutory procedural rights there is no discretion [in the Board] to revoke parole."

5/ The rule is otherwise where the violator prevents a Parole Board hearing by his own illegal conduct. Neal v. Hunter, 172 F.2d 660 (10th Cir. 1949), (hearing during term of sentence impossible because parolee is fugitive from justice); Melton v. Taylor, 276 F.2d 913 (10th Cir. 1960), (hearing during term of sentence impossible because parolee confined to state institution for crime committed after release or parole). But it is clear that those cases are not authority for permitting the Board to imprison appellant for 14 months and then, for the first time, offer him a new hearing with some but not all of the elements of a valid hearing.

Appellant was not accorded these statutory procedural rights. It inexorably follows that his mandatory release has never been validly revoked, that his sentence has expired and that he is entitled to his freedom forthwith.

III. Any Relief Short of Release Would Deprive Appellant of His Constitutional and Statutory Rights.

Even if this court does not order appellant's release because of the extreme facts in this case or because his term expired before a valid parole revocation, it should nevertheless order appellant's release because no other relief meets constitutional and statutory requirements.

In Fleming v. Tate, supra, this Court held that the words "opportunity to appear" necessarily mean an effective appearance, with opportunity for representation by counsel and to present testimony. The court there held that a parolee has the right to be represented by retained counsel at a parole revocation hearing. An uninterrupted series of cases has bolstered that ruling. Moore v. Reid, supra; Robbins v. Reed, supra; Glenn v. Reed, supra; Reed v. Butterworth, supra; and Hyser v. Reed, supra.

It is apparent from the record that appellant has been deprived of the statutory "opportunity to appear" as defined by Fleming v. Tate, supra, and subsequent cases. But, under Hyser v. Reed, supra, this Court might possibly remand this case to the district court to determine whether he should be offered a new hearing with retained counsel and the other procedural rights defined by that case.

That course would be a mockery to appellant, who has already filed an affidavit of poverty in this matter and thus is not in a position to avail himself of the principal advantage of the proffered rehearing. Another parolee in a similar procedural situation who did have funds, however, would be able to employ counsel and present an effective defense to the violation charge. Thus, the outcome would turn as much upon the wealth or poverty of the parolee as upon the merits of his case. Such a result has recently been called "unreasonable" [6/]; we submit

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6/ See Note, Freedom and Rehabilitation in Parole Revocation Hearings, 72 Yale L. J. 368, 374 (1962)

> ". . . the reasoning which supports the allowance of parolee's counsel also demands appointment of counsel for the indigent. If an 'opportunity to appear' means an effective opportunity, and effectiveness is geared to the concept of adequate

(continued on page 31)

that it is also unconstitutional.

To construe 18 U.S.C. §4207 to afford the right to retained counsel but not to appointed counsel for an indigent would deny appellant equal protection of the law.

The Supreme Court said in Bolling v. Sharpe, 347 U. S.

6/ (continued from page 30)
presentation of the case, it would be unreasonable to hold that the standard of effectiveness is dependent upon the affluence of the parolee.

Indeed, such a holding may be compelled by recent cases construing the equal protection clause. 'There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.' Griffin v. Illinois, 351 U.S. 12, 19 (1956) (denial of equal protection for state to refuse to give free trial transcript to indigent defendant so that he might prosecute on appeal). See also Burns v. Ohio, 360 U.S. 252 (1959); Smith v. Bennett, 365 U.S. 708 (1961).

Although the equal protection clause does not apply directly to the federal government, 'discrimination may be so unjustifiable as to be violative of due process.' Bolling v. Sharpe, 347 U.S. 497, 499 (1954). The Court has indicated that the federal government cannot constitutionally distinguish between indigent and non-indigent defendants. See Coppedge v. United States, 369 U.S. 438 (1962)

497, 499 (1954):

> The Fifth Amendment . . . does not contain an equal protection clause as does the Fourteenth Amendment . . . . But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," and, therefore, we do not imply that the two are always interchangeable phrases. But, as this court has recognized, discrimination may be so unjustifiable as to be violative of due process.

A recent Supreme Court decision clearly indicates that the federal government cannot constitutionally distinguish between indigent and nonindigent defendants. Coppedge v. United States, 369 U.S. 438 (1962). And the Supreme Court has also recently overruled the rationale of Betts v. Brady, 316 U. S. 455 (1942), that an indigent defendant in a state noncapital criminal case has the right to appointed counsel only upon a showing of "special circumstances." Gideon v. Wainwright, U. S. , 83 S. Ct. 792 (1963).

The thrust of these decisions compels the conclusion that to permit an indigent's ability to defend his freedom to hang on his wealth would be an inequality of treatment so unjustifiable as to amount to a denial of due process of law in the

constitutional sense.

The acceptable alternative is to release those who have been deprived of the opportunity for a fair hearing.

CONCLUSION

We respectfully submit that the District Court's judgment should be reversed and that the appellant should be released from confinement forthwith.

Respectfully submitted,

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and

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Attorneys for Appellant
Appointed by the Court

June 10, 1963

BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17170

G. W. STUBBLEFIELD, APPELLANT

v.

ROBERT KENNEDY, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BURKE MARSHALL,
Assistant Attorney General,
DAVID C. ACHESON,
United States Attorney,
HAROLD H. GREENE,
BERNARD J. HAUGEN,
Attorneys,
Department of Justice,
Washington, D.C., 20530.

QUESTIONS PRESENTED

1. Whether a procedural defect in a parole or mandatory release revocation hearing may be cured by the offer of a valid hearing.

2. Whether the record shows that appellant has suffered "grievous injustice" so as to entitle him to be released from federal custody.

3. Whether appellant by refusing the offers of new parole revocation hearings within the term of appellant's original sentence can cause the Board of Parole to lose its jurisdiction over him after the expiration of that sentence; thereby entitling appellant to release on the ground his parole was never validly revoked.

4. Whether the refusal to assign indigent parolee counsel in a parole revocation hearing denies him equal protection of the laws.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17170

G. W. STUBBLEFIELD, APPELLANT

v.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

JURISDICTION

The order of the District Court, granting appellee's motion for summary judgment was entered on May 29, 1962. The District Court granted appellant leave to appeal *in forma pauperis* on June 5, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1291.

COUNTERSTATEMENT OF THE CASE

On April 4, 1945, appellant was sentenced in the United States District Court for the District of Massachusetts to a term of seventeen years (J.A. 24). He was incarcerated in the United States Penitentiary at Leavenworth, Kansas, until May 11, 1956, when he was mandatorily released from confinement pursuant to 18 U.S.C. 4163 (J.A. 12). In accordance with general release procedures appellant was given a "Certificate of Conditional Release" (J.A. 31–33) to read and sign. This the appellant refused to do, and the Parole Officer at the prison thereupon read and explained to appellant the rules and regulations on the reverse of the certificate. The prison Parole Offi-

cer subscribed his signature on the face of the certificate to this statement: *"Refused to Sign Certificate.* The rules and regulations on the reverse side were read to and thoroughly explained to GEORGE WILLIAM STUBBLEFIELD after he refused to sign the certificate" (J.A. 31). Appellant was then immediately transferred to the custody of the sheriff of Leavenworth County, Kansas, who placed him in the county jail on detainers from Nebraska and Massachusetts (J.A. 12, 13). On or about May 17, 1956, he was transferred from the county jail to a Nebraska prison (where he was confined for approximately twenty months), and from there to the custody of the Commonwealth of Massachusetts (where he was confined for another period of twenty months commencing in January, 1958, and ending in October 1959) (J.A. 12, 13).

After his release from confinement, and without reporting to or notifying a United States Probation Officer, appellant left Massachusetts and traveled to Columbus, Nebraska—arriving there in early November 1959 (J.A. 2, 13). Since appellant had failed to report to a United States Probation Officer pursuant to the conditions under which the "Certificate of Conditional Release" was issued, a warrant charging him as a conditional release violator was issued on September 26, 1960 (J.A. 24). By appellant's own admission this warrant charged "failure to send in reports and association with questionable characters" (J.A. 4).

On October 11, 1960, appellant was arrested in Nebraska by agents of the Federal Bureau of Investigation under authority of a Federal fugitive from justice warrant based on an indictment issued by a Massachusetts court, for an offense allegedly committed on or about September 3, 1960 (J.A. 13). Extradition was applied for. Appellant resisted the attempted extradition, and ultimately the state charges were dismissed.

On October 19, 1960, appellant was served with the conditional release violation warrant and was shortly thereafter transferred from his confinement in Omaha, Nebraska, to the United States Penitentiary at Leavenworth, Kansas (J.A. 14), a distance of two hundred miles from Columbus, Nebraska, the place of arrest on October 11, 1960.

On October 24, 1960, he was interviewed by Mr. A. T. Miller, a parole officer (J.A. 21–22). Mr. Miller stated that the referral showed that appellant was charged with failing to report, with an alleged murder, and with associating with undesirables. The record shows the following exchange between the parole officer and appellant:

> Q. As I recall, you were specifically informed that you were definitely under conditional release supervision at that time [release from Federal custody May 11, 1956] and that if you were released from state custody, you should report to the nearest probation officer and advise him of your situation and submit reports as requested.
>
> A. Well, I still contend that there was no supervision to follow, that the Federal authorities, when they turned me over to state custody, forfeited all jurisdiction. (J.A. 22)

Appellant was then informed that sometime during the month of January a member of the United States Board of Parole would be at the institution, and that appellant would be given an opportunity to furnish additional information concerning this violation (J.A. 23).

On January 23, 1961, appellant did appear before a member of the Board of Parole (J.A. 19), but he was not represented by counsel, nor was he informed of his right to retain, at his own expense, counsel to represent him or to present voluntary witnesses in his behalf (J.A. 15). Conditional release was revoked on or about February 16, 1961 (J.A. 24).

On May 29, 1961, appellant, *pro se*, filed in the District Court a "Petition for Writ of Mandamus" (J.A. 1–9), seeking release, and alleging that he was being held in confinement without due process of law, and that the warrant ordering his imprisonment was issued for reasons other than the information appearing thereon (J.A. 1, 2). An "Amendatory Complaint for Declaratory Judgment and Injunctive Relief" (J.A. 12–17) was filed by appellant on November 30, 1961, alleging further that "the revocation of the plaintiff's release on parole was arbitrary and capricious, and hence fatally de-

fective." The amended complaint claimed that "due to the length of time that has passed since October 1960, when plaintiff was served with a conditional release violation warrant, plaintiff cannot now be afforded, and pursuant to the Board's offer of May 1961, of a new hearing with the opportunity for representation by counsel, could not then have been afforded the prompt and fair hearing required by Fifth and Sixth Amendments to the Constitution of the United States, by Section 4207 of Title 18 of the United States Code, and by Section 239 of the Regulations of the Board, 28 CFR § 2.39" (J.A. 17).

On April 6, 1962, appellee filed a "Motion for Summary Judgment, or in the Alternative, Motion to Dismiss" (J.A. 18). Accompanying appellee's motion was an affidavit, signed by Joseph Vance, Parole Officer, stating that on December 22, 1961, "I advised the above inmate [George Stubblefield] of his right to be represented by counsel and/or witnesses at a Revocation Heading" (J.A. 23). By his own admission, appellant had also previously been offered an opportunity for a revocation hearing with counsel—apparently in either April or May 1961—which he refused to accept (J.A. 16).

On May 29, 1962, the District Court granted appellee's motion for summary judgment, and on June 6, 1962, a notice of appeal was filed by appellant (J.A. 34), leave to appeal *in forma pauperis* having been granted June 5, 1962.

SUMMARY OF ARGUMENT

I. Appellant is not entitled to be released from custody

At his original revocation hearing, the Board of Parole failed to offer appellant the opportunity to be represented by counsel retained at his own expense or to present the testimony of voluntary witnesses. But this defect was cured by the Board's subsequent offers in which appellant was advised of his right to a new revocation hearing at which he could be represented by his own counsel and at which voluntary witnesses would be allowed to appear and appellant's rejection of these offers. *Hyser* v. *Reed*, —— U.S. App. D.C. ——, 318 F. 2d 225 (1963); *Singleton* v. *Stevens*, 306 F. 2d 513 (C.A. 6, 1962).

In practically every case since *Glenn* v. *Reed,* 110 U.S. App. D.C. 85, 289 F. 2d 462 (1961), was decided, the prisoner involved has argued that his case was unusual, that "grievous injustice" was involved, and that his release was the only appropriate remedy. However, the offer of a new hearing has been held to correct any procedural defects. See *Hyser* v. *Reed, supra.* To be sure, in *Glenn* v. *Reed, supra,* the prisoner was released, but the decision turned on the peculiar substantive facts of that case. The warrant had been issued and the release revoked on the basis of information supplied by a "jealous woman", which information was later disproved. Appellant here claims his release was revoked on a fabricated charge of murder, and hence analogous to the information of the jealous woman in *Glenn.* However, appellant's parole was revoked for failure to report to a United States Probation Officer as directed; and the record indicates that there was no abuse of discretion on the Parole Board's part in so acting.

II. The Board did not lose its jurisdiction over appellant

Appellant contends that he must be now released on the ground that, since his original term expired April 5, 1962, the Parole Board has lost its jurisdiction over him, and a subsequent hearing containing the requisite safeguards could not revive that jurisdiction.

In the *Hyser* decision, the sentence of one of the prisoners had expired before the offer of a new hearing. By remanding that case to the District Court to determine whether a new hearing was necessary this Court has implicitly rejected the appellant's contention.

Violation of parole interrupts service of sentence, and the warrant, if issued before the expiration of maximum term, may be executed after the original expiration date of the sentence. 18 U.S.C. 4205; *Zerbst* v. *Kidwell,* 304 U.S. 359, 361 (1938); *Nave* v. *Bell,* 180 F. 2d 198 (C.A. 6, 1950); *United States ex rel. Jacobs* v. *Barc,* 141 F. 2d 480 (C.A. 6, 1944), *cert. denied,* 322 U.S. 751. *A fortiori,* if the warrant may be validly executed after the expiration of the maximum sentence, a revocation hearing by the Parole Board must in such instances be held after the original term has expired.

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III. Appellant is not entitled to the appointment of counsel

This Court in the *Hyser* decision has ruled that counsel need not be appointed for indigent prisoners in mandatory release revocation hearings. See 318 F. 2d at 238.

ARGUMENT

I. Appellant is not entitled to be released from custody

The record shows that at least twice appellant was offered the right to a new revocation hearing at which he could be represented by counsel retained at his own expense, and that at least once he was offered the right to a new hearing at which he could present the testimony of voluntary witnesses who might wish to appear in his behalf.[1] These offers cured the defects in the original revocation hearing.

Two of the cases involved in *Hyser* v. *Reed,* —— U.S. App. D.C. ——, 318 F. 2d 225, 247 (1963), were remanded—because the individuals involved denied violation of parole and had not been convicted of a crime while on parole—but significantly this Court did not order release but merely that the District Court make a determination whether the preliminary hearing provided for in the *Hyser* opinion was appropriate in the particular cases. Said the Court (318 F. 2d at 246):

> Balancing the array of competing considerations we are unwilling to hold that prisoners validly convicted, paroled and thereafter retaken should now be set at liberty for want of compliance with steps only now for the first time commanded.[2]

To be sure, in *Glenn* v. *Reed,* 110 U.S. App. D.C. 85, 289 F. 2d 462 (1961), the Court did require the release of the prisoner and appellant here relies on the *Glenn* precedent. However, it is quite clear that *Glenn* is not applicable. The *Glenn* case, as this Court recognized, was an unusual one. The warrant there had been issued based on information supplied by a "jealous woman," and it subsequently became apparent that there was no basis for the issuance of the warrant. Under those peculiar circumstances the Court felt that release of the

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[1] Appellant rejected all of these offers.

[2] See also, *Singleton* v. *Stevens,* 306 F. 2d 513 (C.A. 6, 1962).

prisoner rather than a mere remand was appropriate. But the *Glenn* decision, as was subsequently pointed out in *Reed* v. *Butterworth*, 110 U.S. App. D.C. 365, 297 F. 2d 776 (1961), is limited to cases of "grievous injustice."

In practically every case since *Glenn* was decided, the prisoner involved has argued that his case was an unusual one, that "grievous injustice" was involved and that his release was the only appropriate remedy. However, in no case other than *Glenn* did this Court order release on account of the failure of initially to allow counsel and voluntary witnesses where an offer of a new hearing with counsel and witnesses was subsequently made. Significantly, as indicated *supra*, this is true also of the series of cases before the Court in *Hyser* v. *Reed*, *supra*. This appellant's showing in that respect is no more impressive than that of others who have advanced the grievous injustice argument.

Appellant seeks to analogize what he calls a "fabricated charge of murder" (Brief, p. 21) to the unfounded accusation of the "jealous woman" in *Glenn*. And indeed the cases might have been exceedingly similar except for one highly important difference. Appellant's parole was not revoked because of the murder charge but because he failed to report to his parole officer. In fact, when the revocation warrant was issued on September 26, 1960, by appellant's own admission it charged him with only the failure to report, and association with an undesirable. Hence, it was the Parole Board's intention to retake appellant for reasons unconnected with the murder, before he was charged with murder, or arrested on that charge.

While the summary of the revocation hearing (J.A. 19) and the violator's statement (J.A. 21) indicate that appellant was charged with alleged murder and associating with undesirables in addition to failure to report, a fair inference may be drawn from both records that the Parole Board and Parole Officer considered the latter to be of primary importance. The summary shows that the revocation hearing commenced with the question of why appellant did not report and ended on the same issue. The murder charge was dealt with only incidentally and apparently given little weight since appellant was in clear violation of the parole condition requiring him to report. The

interview before the parole officer confirms the fact that primary emphasis was placed on appellant's failure to report. At both the beginning and closing of this interview, also, appellant in answering questions concerning failure to report did not once deny that he had not been informed of this condition but contended that in his opinion the Federal authorities had forfeited all jurisdiction over him. By the appellant's own admission (Brief, p. 7) the revocation "could only have been based upon the charge of failure to report to a parole officer * * *." Failure to report was, of course, a valid ground for revocation, and it is thus quite apparent that appellant cannot successfully complain—as did *Glenn*—that the basis for his revocation had been vitiated.

To be sure, appellant makes an argument that he did not understand that he was required to report to a parole officer. As we will show *infra*, there is no factual basis for appellant's claim in this regard. In any event, however, even if appellant were correct on this issue, the defect would not rise to the quality of a quasi-jurisdictional one as in *Glenn* but would at most constitute an attack on the sound judgment and exercise of discretion of the Board. It has been held many times that the courts will not determine *de novo* whether in fact the prisoner has violated his parole (*United States ex rel. Jacob* v. *Barc*, 141 F. 2d 480 (C.A. 6, 1944), *cert. denied*, 332 U.S. 751; *Nave* v. *Bell*, 180 F. 2d 198 (C.A. 6, 1950)); they will not pass on the reliability or sufficiency of the information on which parole was revoked (*Rogoway* v. *Warden*, 122 F. 2d 480 (C.A. 9, 1941), *cert. denied*, 315 U.S. 808) or substitute their judgment for that of the Board's. *Freedman* v. *Looney* 210 F. 2d 56 (C.A. 10, 1954); *Jones* v. *Welsh*, 80 U.S. App. D.C. 253, 151 F. 2d 769 (1945).

The record shows that revocation of appellant's mandatory release was not in any way an abuse of discretion. The crux of appellant's contention in this regard is that the "obviously inept [Parole Board] member" (Brief, p. 21) did not understand whether appellant was obligated to report for supervision and, if so, whether his failure to report "because of an understandable confusion" was sufficient cause for his revocation of parole. In this connection appellant claims that be-

cause he was being transferred in 1956 to state custody rather than released to liberty, he was never instructed to report to a parole board representative (Brief, pp. 2–3). But the record simply does not bear this out.

When, on October 24, 1960, at the first interview with the prison's parole officer, A. T. Miller, after having been returned to Leavenworth Penitentiary, appellant was told that upon his prior release from Leavenworth he had been "specifically informed" that he was to report to the nearest probation officer, he did not deny that he had been apprised of the reporting requirement. Instead he explained, several times, that he did not report because in his opinion he did not have to do so since the Parole Board forfeited all jurisdiction when it turned him over to state custody (J.A. 22). Nor does the summary of the Board of Parole Transcript of Hearing indicate that appellant denied having received instructions to report to the nearest parole officer. Appellant again contended at this hearing that he did not report because he interpreted his Certificate of Conditional Release as not requiring him to. Indeed, his "Certificate of Conditional Release" bears the following statement over the subscribed signature of Parole Officer A. T. Miller:

> *Refused to Sign Certificate.* The rules and regulations on the reverse side were read to and thoroughly explained to GEORGE WILLIAM STUBBLEFIELD after he refused to sign the certificate.

The face of the certificate contains this order:

> It is ordered that said person be released under the conditions set forth on the reverse side of this certificate, and be subject to such conditions until expiration of the maximum term or terms of sentence, less 180 days on 10–5–61.

The reverse side contains among ten others these conditions:

> 1. That I will proceed directly to designated district and upon arrival I will report in person immediately to my Parole Advisor, and to the United States Probation Officer responsible for my supervision * * *.
>
> 3. That I will remain within the limits fixed in the Certificate of Release, to wit: United States District:

> *Massachusetts.* If I have good cause to leave these limits I will first obtain written permission from the Probation Officer.

followed by the statement:

> I have read, or had read to me, the foregoing conditions governing my release. I fully understand them and I will abide by and strictly follow them.

It must be pointed out that the parole officer who read and thoroughly explained the above provisions to appellant was the same officer who presided at the preliminary interview on October 24, 1960, and who at that time reminded the appellant he had been "specifically informed" to report to the nearest probation officer upon release from state custody.

Thus it is apparent that appellant's charge that a "grievous injustice" had been done to him is completely without foundation. Surely it cannot be argued that the Parole Board was acting arbitrarily and capriciously when, contrary to appellant's view, it determined that "the failure to report because of understandable confusion was sufficient cause for revocation of his parole" (Brief, p. 22).

It is true, as appellant alleges (Brief, p. 3) that he refused to sign the form statement on the certificate of conditional release acknowledging that the conditions of his release had been explained to him. But it is a fairly transparent "bootstrap" operation to refuse to sign the certificate concerning the conditions of parole and later to claim confusion about what those conditions were. The fact is that it was explained to appellant that he was to report to a parole officer upon release, appellant knew full well that this was what he was supposed to do, that he failed to do so, and that his parole was revoked on account of this failure.

II. The Board did not lose jurisdiction over appellant

Appellant contends that he must be now released on the ground that, since his original term expired April 5, 1962, the Parole Board has lost its jurisdiction over him, and a subsequent hearing containing the requisite procedural safeguards could not revive that jurisdiction.

This issue was resolved adversely to appellant when this Court rejected a similar argument made on behalf of Jamison, one of the appellants in the *Hyser case*. Jamison, like this appellant, had two initial revocation hearings (without counsel or witnesses) during the period of his original term. But unlike appellant, Jamison was offered a new hearing in conformity with the opinions of this Court in *Glenn* v. *Reed*, 110 U.S. App. D.C. 85, 289 F. 2d 462 (1961); and *Reed* v. *Butterworth*, 111 U.S. App. D.C. 365, 297 F. 2d 776 (1961), *after* the expiration of his term. It was argued that the Board had no jurisdiction to offer the new hearing nor to retain Jamison in custody. In light of the clear language of 18 U.S.C. 4205 [3] this Court apparently did not consider that this contention warranted direct comment; but by remanding Jamison's case to the District Court to determine whether a hearing was necessary, it implicitly rejected it. Appellant's contention can have no greater merit than Jamison's since he was actually offered new hearings within the term of his original sentence.

Under the parole statutes a retaken parolee suffers a penalty for his violation. While, in the absence of a violation, the time he is out on parole is credited toward his sentence,[4] a violation tolls the running of the sentence, *Zerbst* v. *Kidwell*, 304 U.S. 359, 361 (1938); *Bates* v. *Rivers*, No. 17776 (C.A. D.C.), decided August 15, 1963; and the warrant, if timely and validly issued, may be executed after the original expiration date of the sentence. *Anderson* v. *Corall*, 263 U.S. 193 (1923); *Melton* v. *Taylor*, 276 F. 2d 913 (C.A. 10, 1960); *Teague* v. *Looney*, 268 F. 2d 506 (C.A. 10, 1959); *Neal* v. *Hunter*, 172 F. 2d 660 (C.A. 10, 1949); *Nave* v. *Bell*, 180 F. 2d 198, 199–200 (C.A. 6, 1950); *United States ex rel. Jacobs* v. *Barc*, 141 F. 2d

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[3] 18 U.S.C. 4205 provides:

"*Retaking parole violator under warrant; time to serve undiminished*

"A warrant for retaking of any United States prisoner who has violated his parole, may be issued only by the Board of Parole or a member thereof and within the maximum term or terms for which he was sentenced. *The unexpired term of imprisonment of any prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve.* [Emphasis added.]

[4] "Such parolee shall * * * remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of of the maximum term or terms for which he was sentenced." 18 U.S.C. 4208.

480 (C.A. 6, 1944), *cert denied*, 322 U.S. 751; *Rogoway* v. *Warden*, 122 F. 2d 967 (C.A. 9, 1941), *cert. denied*, 315 U.S. 808.

There is no authority to confine this principle to special situations as appellant would contend (Brief, p. 28, n. 5), for example, where the parolee is a fugitive from justice or where execution of the warrant prior to the original expiration date is rendered impossible because the parolee has been sentenced and confined elsewhere for the commission of a crime while on parole. In *Rogoway* v. *Warden, supra*, a paroled prisoner was returned to custody on December 5, 1939, for violation of his parole. Although his original sentence bore an expiration date of February 1, 1940, and the Board might have revoked prior to that date, his parole was not revoked until May 6, 1940. The court specifically rejected his contention that the Board lacked authority to revoke because his sentence had expired, noting that the violation interrupted the service of the sentence and that he lost the time he had served on parole. 122 F. 2d at 969. *Cf. Washington* v. *Clemmer*, 83 U.S. App. D.C. 269, 169 F. 2d 300 (1948); *Jones* v. *Clemmer*, 82 U.S. App. D.C. 288, 289, 163 F. 2d 852, 853 (1947); *Hammerer* v. *Huff*, 71 U.S. App. D.C. 249, 110 F. 2d 413 (1939). And in *Mills* v. *Hiatt*, 50 F. Supp. 689 (D. Pa. 1943), the court held that a violation of a conditional release is not limited to the commission of a crime and conviction therefor.[5]

Appellant relies on *Clark* v. *Surprenant*, 94 F. 2d 969 (C.A. 9, 1938), for the proposition that the Board loses its jurisdiction over the appellant after the expiration of the original sentence. But this decision held only that in a habeas corpus proceeding the court could review the facts to determine whether parole had been violated—without waiting for Parole Board determination.

III. Appellant is not entitled to the appointment of counsel

Appellant also argues that he is unable to retain counsel. The short answer is that this issue, in all its ramifications, was

[5] For example, when a valid warrant is issued just prior to the expiration date of the maximum sentence it is virtually impossible to hold the revocation hearing within the term of the original sentence. See *Nave* v. *Bell, supra*, where the term expired September 12, 1948, and the warrant was issued September 10.

thoroughly considered in *Hyser* and there decided adversely to appellant's contention. See 318 F. 2d at 238. The fact that appellant is proceeding in this Court *in forma pauperis* does not distinguish his case from that of the *Hyser* appellants; all of them were without funds, and, indeed, the discussion in the *Hyser* opinion concerning this issue obviously assumed that the prisoners lacked funds to retain counsel.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

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DAVID C. ACHESON,
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HAROLD H. GREENE,
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AUGUST 1963.

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JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,170

G. W. STUBBLEFIELD,

Appellant,

v.

ROBERT KENNEDY, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JOINT APPENDIX

[Filed May 29, 1961]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. W. STUBBLEFIELD, U.S. Penitentiary Leavenworth, Kansas — Petitioner, v. ROBERT F. KENNEDY, U. S. Atty. General, Respondent, EVA BOWRING, Member, U. S. Parole Board, Co-Respondent.	)	Civil Action No. 1664-61

PETITION FOR WRIT OF MANDAMUS

Comes now petitioner G. W. STUBBLEFIELD, before the Honorable Court seeking relief from unjust and unlawful imprisonment in violation of those rights guaranteed by Amendments V and VIII to the Constitution of the United States of America.

He alleges and contends as follows:

1. That he is being held in penal confinement in the custody of the United States Attorney General without due process of law, without proper commitment, on a term of sentence imposed without the judicial authority of a United States Court;

2. That, in violation of trust and abuse of authority a member of the United States Parole Board, Eva Bowring, did issue on September 26, 1960 on petitioner a warrant ordering his imprisonment in the United States Penitentiary, Leavenworth, Kansas.

Petitioner alleges this warrant was served, in reality, for reasons ulterior to the information of the warrant.

BACKGROUND OF THE ISSUE

Petitioner was committed to the custody of the United States Attorney General for a term of 17 years in March 1945.

On May 11, 1956, after good time deductions from the 17-year term, he was taken in irons from within the United States Penitentiary, Leavenworth, Kansas by an agent of Leavenworth County, Kansas Sheriff's Office and lodged in the county jail in Kansas's sovereign custody on warrants from Nebraska and Massachusetts.

May 17, 1956 petitioner was handed over from the custody of Kansas to the custody of Nebraska, where he was imprisoned for approximately 1 year and 8 months.

In January 1958, he was handed over from the custody of Nebraska to the custody of Massachusetts, where he was imprisoned for another 20 months, then was released to freedom.

Early in November 1959 he established residence in the city of Columbia, Nebraska, where he obtained work and lived in a socially acceptable manner, an asset to the community until October 11, 1960.

About 5:00 o'clock that evening several F.B.I. agents came rushing into a factory where he was at work on evening shift and arrested him on a federal fugitive from justice warrant based on an indictment, so they said, charging him with murder in East Cambridge, Massachusetts, September 3, 1960.

Petitioner denied any guilt and warned the agents a mistake was being made. He was taken then before a U.S. Commissioner and upon refusing removal was ordered held for a hearing in U. S. District Court and was then committed to the custody of the U. S. Marshal in Omaha, Nebraska.

F.B.I. investigation very shortly established that petitioner definitely had been working in Columbus, Nebraska on September 3, 1960 and under no sort of time arrangement could he have committed the

Massachusetts murder. This information was sent through F.B.I. channels to Massachusetts.

On October 17, 1960, two state agents from Massachusetts arrived in Omaha to question petitioner and make their own investigation of the Nebraska situation. One agent identified himself as Chief of State Police, the other as an agent from the States' Attorney's office.

During their conversation with petitioner they furnished detailed information about the crime, which they described as the fatal shooting of a police patrolman by one or both of two men, one of whom had been immobilely wounded at the scene and captured, while the other had fled and eluded police search.

The captured offender, Edgar Cook, a onetime associate of petitioner whom he knew well, in a convincing story and statement to the police named petitioner as being his companion and the person who had shot the patrolman. His, Cook's, story was in fact, as it turned out eventually, completely false regarding petitioner, -- but apparently it seemed so frank and realistic at the time that an indictment was found and an intensive search begun.

The Massachusetts agents showed petitioner a formal extradition request and warned him quite frankly that even should their own investigations convince them of his innocence they, nevertheless, would seek his extradition because he not only would be useful to them as a state's witness but that also his presence in Massachusetts would help convince the "Chief's" fellow officers everything was "on the square" concerning the Chief's investigative efforts and petitioner's innocence.

The agents also warned petitioner that early in their search for him they had developed a clever scheme to bypass, if necessary, any frustrating extradition problems should such arise when he were eventually arrested somewhere. They told him they had "influenced" the U. S. Attorney in Massachusetts to cause a conditional release violation warrant to be issued and held ready to be served, thereby making it possible to cause petitioner to be taken to a federal penitentiary and

held so that he would be available to them in habeas corpus. This warrant, they predicted, would be served if it appeared that his extradition from Nebraska would be unlikely.

To this petitioner replied that he had not been conditionally released in 1956 and did not believe he could be lawfully held in a federal penitentiary. He told them he would file a court action if such a scheme were put into effect. Their response was: "Perhaps so, who cares? Court actions take time and ways could be found to make them take as long as necessary to serve their needs."

In response to petitioner's protest: "But what about me and how I am being treated in all this?" The Chief shrugged and observed that sometimes a person in his profession had to do things he didn't like to do.

Two days later petitioner was served with a signed extradition order from the governor of Nebraska and was informed that it was petitioner's right to be heard in a state court before the order could have legal effect, if he so desired.

Petitioner indicated he did want a hearing in a state court.

Within the hour, a conditional release violation warrant issued from the United States Parole Board was served on him, and in less than thirty minutes he was being transported by automobile to the United States Penitentiary, at Leavenworth, Kansas. There, some days later, he was officially notified he "owed" the government 2,153 days on the 17-year sentence imposed on him in March 1945 (see attached form).

In January 1961, more than three months after the warrant was served, he was ordered to appear for a hearing before a member of the United States Parole Board. Eva Bowring presided. She opened the hearing by referring to the 17-year sentence, then told petitioner he was charged with failure to send in reports, suspicion of murder, and association with questionable characters. (The warrant served on petitioner, October 19, 1960 charged only failure to send in reports and association with questionable characters.) She asked what he had to say. He replied that he then had an action in District Court questioning the situation. She

asked why he failed to send in reports. He responded with: that from his point of view there had been no reason why he should. She then noted from the record that he had not signed conditional release and remarked "quote: However, that makes no difference, unquote." In conclusion she stated that she was going to recommend that he be held for mandatory release violation. Petitioner felt like responding with "Of course, Madam Napoleon" as he arose from his chair to leave the room.

In mid-March 1961 petitioner received official notice that he had been ordered held, by the United States Parole Board, for mandatory release violation.

ARGUMENT I.

Title 18, U.S.C.A., Sec. 4161 authorizes the awarding of good time deductions from a prisoner's term and specifies the amount, which was ten days a month in petitioner's case, totaling, with some 70 days industrial time, about 5 years and 10 months.

Title 18, U.S.C.A., Sec. 4163 declares: "A prisoner shall be released at the expiration of his term of sentence less the time deducted for good conduct. A certificate of such deduction shall be entered on the commitment by the warden or keeper."

The language of Section 4163 is plain and clear, leaving no room for doubt. Therefore, the lawful expiration of petitioner's term of (17-years) sentence was, after good time deduction, May 11, 1956, and he was released that day.

If, according to the specifications of Section 4163, his 17-year sentence expired, then how could he owe the government 2,153 days? The good time was officially and lawfully awarded, not loaned to petitioner. And according to the law in effect during the time deduction was awarded to him the only condition was monthly good conduct.

If the statements of the foregoing argument represent facts of record and facts in law, then the sentence of 2,153 days he is now serving has to be a sentence imposed separately from and subsequently to,

the officially and authoritatively completed 17-year sentence. If such is the case, then by what due process of law, on what legally proper commitment, and by what United States Court was this done?

ARGUMENT 2.

Petitioner believes and contends that the intent of Congress in establishing a United States Parole authority was to provide only for acts of clemency and relevant problems of administration. He strongly doubts that Congress ever intended that the lack of specifice restrictions and the broad powers of that authority should ever be used in any manner other than with reference to clemency pursuits. He contends that, although the parole board is an agency of the Department of Justice, it is a violation of trust and an abuse of authority for the board or one of its members to use the facilities and the privileges of their authority auxiliary to the business interests of other agencies or departments of government, federal or state, except for purposes of clemency.

Petitioner alleges that in his case the authority of the United States Parole Board thusly was abused, and he believes the facts of his treatment and the relationships of events support this allegation.

Why did Eva Bowring, member of the board, suddenly on September 26, 1960, four years and some five months after his release on May 11, 1956, issue a violation warrant charging petitioner with failure to send in reports, when he had not at anytime previously during that period sent in a report? And as according to the same warrant, with whom questionable characters had he (to the board's knowledge) been associating?

Since petitioner had been indicted for murder (with a conviction carrying a death, or life, sentence) when the violation warrant was issued, what sensible purpose would the warrant serve within the authoritative interests of the board?

Why was the warrant used to remove petitioner from the jurisdiction of the State of Nebraska before he could be heard in a state court concerning his extradition to Massachusetts?

On October 19, 1960 an Associated Press news release date-lined Omaha, Nebraska appeared in midwest newspapers stating that petitioner was taken to Leavenworth Penitentiary in a federal legal maneuver, etc. Where did the Press reporter get his information?

The contention of the Parole Board has been that petitioner was released mandatorily or conditionally on May 11, 1956 and, therefore, is now subject to their authority as provided in Title 18, U.S.C.A., Section 4164, which reads:

> "A prisoner having served the term or terms for which he shall have been sentenced after June 19, 1932, less good time deduction, shall upon release be treated as if on parole, and shall be subject to all the provisions of law relating to the parole of United States prisoners until the expiration of the maximum term or terms for which he was sentenced.
>
> "This section shall not prevent delivery of a prisoner to the authorities of any state otherwise entitled to his custody."

This law was initially an experimental piece of legislation, on a ten year basis, enacted during a period of grave public distress due to the great depression, a foundering economy, widespread un-employment and a general breakdown in law enforcement. Its semantics bespeak expediency and ignore logic, for any attempt to interpret its meanings abstractly against the background of laws leads only to a conclusion that it is a sheer piece of legal nonsense, ambiguous, conflicting within itself, and in conflict with other laws. Its generalization is so great that, in joinder with the United States parole law, its applications are "wide open" to gross abuses of the law. And because Section 4164 decrees a state of existence rather than defines a crime, in litigation its meanings appear to have been interpreted almost always in terms peculiar to the aspects of the particular case, and, therefore, expediently, speciously and autocratically. Indeed, a "Code" of such law should fulfill a dictator's fondest dream.

Since Title 18, U.S.C.A. Section 4164 in its application circumvents due process of law, petitioner contends his rights under Amendment V of the United States Constitution are being violated by statutory enactment, specifically Section 4164, Title 18, U.S.C.A. in joinder with the United States Parole Board Law.

He further contends that his right under Amendment VIII, which forbids cruel and unusual punishment, is being violated in that:

1. Nearly every state of the Union has a statutory good time law that upon application materially and factually reduces and finalizes a prisoner's sentence. Those State laws represent the will of the people expressed as sectional groups, and inferentially then, by their numbers, en mass. Therefore, since Section 4164, in any application is an "extension of the walls," it affectively nullifies Sections 4161 and 4163 of U.S.C., and in his case becomes cruel and unusual punishment.

2. Furthermore, Section 4164, by its formulation, must apply to every U.S. prisoner sentenced since July 19, 1932. If such has not been done and is not being done, then in cases where it is applied, such act is discriminatory and results in gross discrepancy in penalties for a common type of offense, amounting to cruel and unusual punishment.

PRAYER

Petitioner challenges the United States Parole Board to produce for the Honorable Court's consideration any important fact known by them as of September 26, 1960 indicating that he was other than an asset to the community in which he worked and lived socially acceptably during his year of freedom.

Likewise, petitioner challenges the parole board to show where or how even one worthwhile thing has been accomplished by their actions in his case.

Petitioner questions: Who set the four-year-long standard under which he "failed" to send in reports?

He asks that the board be required to name the questionable characters with whom they charge he associated before their warrant was issued on September 26, 1960-though now, of course, by their own order he is required to associate with some 2,000 questionable characters in the United States Penitentiary, at Leavenworth, Kansas.

WHEREFORE, as a voice from the wilderness, petitioner respectfully prays the Honorable Court will issue forth an order requiring the respondents named herein to appear and show cause why he should not be returned forthwith to freedom, unconditionally and with reasonable compensation for costs and expenses incurred as the result of their acts, and will forever pray.

Respectfully submitted,

/s/ G. W. Stubblefield
Petitioner, pro se
United States Penitentiary
Leavenworth, Kansas

The petitioner hereby certifies that a copy of the foregoing has been mailed to the Attorney General for the United States of America.

/s/ G. W. Stubblefield,
Petitioner, pro se

SUBSCRIBED and SWORN to before me this 1st day of May, 1961.

/s/ A. T. Miller
United States Parole Officer
United States Penitentiary
Leavenworth, Kansas

[Filed May 29, 1961]

APPENDIX "A"

[Attached to Petition For Writ Of Mandamus]

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

SENTENCE NOTICE TO INMATE

_____
(Name of Institution)

_____
(Place)

October 23, 1960

To- STUBBLEFIELD, George William No. 72560-L

According to commitment papers in your case you were sentenced 10-19-60, to a term of 2153 days. MRV

* * * * *

You were received at this institution	10-19-60
Your sentence begins	10-19-60
You are eligible for parole	* * *
Your "good conduct" term expires	10- 3-64
Your full term expires	9-10-66
Good time allowed	707 days.

/s/ D. R. Anderson
Clerk

_____

[Filed May 29, 1961]

APPENDIX "B"

[Attached to Petition For Writ Of Mandamus]

THE LEAVENWORTH TIMES
* * *

Daniel R. Anthony, III
Editor and Publisher

LEAVENWORTH, KANSAS

April 10, 1961

G. W. Stubblefield 72560
U. S. Penitentiary
Leavenworth, Kan.

Sir:

Am forwarding the clipping you request. The article carries AP dateline, Omaha. The address you seek would be The Associated Press, Omaha, Neb. I cannot offer any more help on the street address, etc., in Omaha, but that address should get your communication to the AP there.

/s/ John H. Johnston III
news editor

OMAHA (AP) -- George W. Stubblefield, who has been fighting extradition to Massachusetts where he is wanted in connection with the slaying of a policeman, was taken to a federal penitentiary at Leavenworth, Kan., Wednesday in a federal legal maneuver.

The U.S. Board of Paroles issued a conditional release warrant which permitted officials to return Stubblefield to federal custody for parole violation.

[Filed Nov. 30, 1961]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. W. STUBBLEFIELD, Plaintiff v. RICHARD A. CHAPPEL, Chairman, United States Board of Parole, EVA BOWRING, EDWARD J. DONOVAN, JOHN B. HENRY, and GEORGE J. REED, members, United States Board of Parole, Defendants.	)	Civil Action No. 1664-61

AMENDATORY COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. This is an action for declaratory judgement and injunctive relief under the Declaratory Judgement Act, Title 28 USCA § 2201, and under Section 10 of the Administrative procedure Act, Title 5 USCA § 1009.

2. The plaintiff is being held in the United States Penitentiary at Leavenworth, Kansas, upon order of the United States Board of Parole (hereinafter referred to as the "Board").

3. The above named Richard A. Chappel is the chairman of the Board and the other named defendants are members of the Board. The Board is located in the HOLC Building, 1st and D Streets, N.W., Washington, D. C.

4. In March, 1945, plaintiff was sentenced to the custody of the Attorney General of the United States for a term of 17 years by a Federal court, and was sent to the United States Penitentiary at Leavenworth, Kansas.

5. On or about May 11, 1956, after good time deductions from the aforesaid 17 year sentence, plaintiff was mandatorily released from Leavenworth under Title 18 USCA § 4163. He was immediately transferred to the custody of the sheriff of Leavenworth County, Kansas, who

placed him in the county jail on detainers from Nebraska and Massachusetts.

6. That although plaintiff had routine "pre-release" conferences with parole and prison officials, he was neither given instructions relating to post-relief behavior nor instructed to report either in writing or in person to the United States Board of Parole, its officers and agents, or to any other official of the United States; that he did not sign a certificate of conditional release, and that he was told by prison officials that he need not be concerned about instructions relating to post release behavior and procedure because he was being released on detainers.

7. On or about May 17, 1956, petitioner was transferred from the custody of Kansas to the custody of Nebraska, where he was imprisoned for approximately twenty months.

8. In January, 1958, he was transferred from the custody of Nebraska to the custody of Massachusetts, where he was imprisoned for another twenty months and then released to freedom.

9. Early in November, 1959, plaintiff established residence in Columbus, Nebraska, where he secured employment and lived in a socially acceptable manner.

10. On or about October 11, 1960, plaintiff was arrested by agents of the Federal Bureau of Investigation at his place of employment acting under authority of a Federal fugitive from justice warrant which was based on an indictment issued by a Massachusetts Court, charging him with the crime of murder in East Cambridge, Massachusetts, allegedly committed on or about September 3, 1960.

11. Plaintiff refused voluntary removal to Massachusetts and, after a hearing, was committed to the custody of the United States District Court in Omaha, Nebraska.

12. On the date of the crime for which plaintiff was indicted by a Massachusetts Court, he was in fact not even in Massachusetts but was working in Columbus, Nebraska, a fact that he understands and believes was substantiated in every detail by the Federal Bureau of Investigation.

13. On or about October 17, 1960, two State agents from the Commonwealth of Massachusetts questioned plaintiff and exhibited to him a formal extradition request and advised him that even if their investigation should convince them of his innocence they would, nevertheless, seek his extradition because not only he would be useful to them as a state's witness, but also because his presence in Massachusetts would help convince Massachusetts officials of the thoroughness of the investigation by the said two agents.

14. The said agents also warned plaintiff that early in their search for them they had developed a scheme to bypass, if necessary, extradition problems upon plaintiff's location and arrest. They told plaintiff that they had "influenced" the United States Attorney in Massachusetts to cause a conditional release violation warrant to be issued and held ready to be served. They further stated that should any difficulty or delay be encountered in securing plaintiff's extradition from Nebraska, the said conditional release violation warrant would be employed.

15. On or about October 19, 1960, plaintiff was served with a signed extradition order of the Governor of Nebraska, and immediately requested a hearing on the said order.

16. Within one hour of service of the aforesaid extradition order and plaintiff's demand for a hearing on same, he was served with a conditional release violation warrant charging him with a failure to send in reports and with associating with questionable characters. Within one-half hour plaintiff was transferred from his confinement in Omaha, Nebraska, to the United States Penitentiary at Leavenworth, Kansas. Shortly after his arrival at Leavenworth plaintiff was officially notified that he "owed" the United States 2,153 days on the 17 year sentence imposed on him in March, 1945.

17. In January, 1961, plaintiff was ordered to appear before a member of the United States Board of Parole at Leavenworth Penitentiary. At this "hearing" the Board member stated that plaintiff

was charged with a failure to send in reports, suspicion of murder, and association with questionable characters. Said Board member then asked plaintiff a few questions relating to the charges, and concluded with a declaration that she was going to recommend that plaintiff be held as a mandatory release violator.

18. While there was a reporter present at the January, 1961, hearing referred to above, plaintiff believes that she did not record a verbatim account of the proceedings, although she later prepared a "Transcript of Hearing" which consists of a narrative summary of the proceedings.

19. Without plaintiff's consent said hearing before a member of the United States Board of Parole was held in the United States Penitentiary in Leavenworth, Kansas, where plaintiff was confined and not in the jurisdiction where the alleged acts of plaintiff in violation of his parole occurred.

20. Plaintiff was not furnished counsel by the said Board, and he was not offered counsel by said Board; he was not given an opportunity to obtain counsel for said hearing; he was not notified of his right to obtain counsel for said hearing; and he had made no election not to have counsel and had not waived his right to counsel at the said hearing.

21. Plaintiff was given inadequate advance notice of the time and place of his hearing; he was not afforded compulsory process for the summoning of witnesses in his behalf, or an adequate opportunity to obtain witnesses in his behalf or to present testimony and evidence in his behalf; he was not afforded the right to confront and cross-examine witnesses against him; the hearing took only a few minutes, and was limited to the plaintiff, the member of the Board and the reporter; the evidence consisted of unsworn hearsay statements which were not shown to plaintiff.

22. The procedures pursuant to which plaintiff's parole was revoked denied plaintiff of his right to a fair, meaningful and adequate opportunity to appear as required by law and deprived plaintiff of rights guaranteed him by Section 4201-07 of Title 18 of the United States Code, Title 18 USCA §§ 4201-07, and by the 5th and 6th Amendments to the Constitution of the United States.

23. Plaintiff was on or about March 15, 1961, notified of the purported revocation of his parole and he has since been confined at Leavenworth Penitentiary.

24. Effective April 24, 1961, the United States Board of Parole adopted a rule which read in part:

> "All prisoners in custody as violators previously given revocation 'hearings' without being afforded the opportunity for representation by counsel shall be given an opportunity for a hearing with counsel".

Pursuant to this rule plaintiff, who has filed with this Court an Affidavit of Poverty dated May 1, 1961, was offered an opportunity for a revocation hearing with counsel. Said opportunity was not intended to be an offer by the Federal Government or any agency thereof, including the Board, to furnish or appoint counsel for plaintiff. Said offer did not fulfill the requirements of Section 4207 of Title 18 of the United States Code, or of the 5th and 6th Amendments to the Constitution of the United States.

25. Due to the fact that ---

(A) the circumstances of the case establish that the United States Board of Parole in charging plaintiff as a conditional parole violator was merely endeavoring to aid Massachusetts in the evasion of the extradition laws, and

(B) the alleged breach of the conditions of release, if any, was innocent and technical, and that

(C) there were in fact no conditions imposed upon plaintiff at the time of his release from prison, ---

the revocation of the plaintiff's release on parole was arbitrary and capricious, and hence fatally defective. Due to the length of time that has passed since October, 1960, when plaintiff was served with a conditional release violation warrant, plaintiff cannot now be afforded, and pursuant to the Board's offer of May, 1961, of a new hearing with the opportunity for representation by counsel, could not then have been afforded the prompt and fair hearing required by the 5th and 6th Amendments to the Constitution of the United States, by Section 4207 of Title 18 of the United States Code, and by Section 2.39 of the Regulations of the Board, 28 CFR § 2.39.

WHEREFORE, plaintiff respectfully prays that the Court

(1) Review the hearing and the action of the Board in the above named matter.

(2) Declare such hearing to be invalid.

(3) Issue a mandatory injunction against said Board ordering that plaintiff be forthwith released from the United States Penitentiary at Leavenworth, Kansas, and restored to freedom.

(4) Declare that because of the circumstances of this case the Board cannot now by affording plaintiff a new hearing with counsel cure the defects of the arbitrary and capricious revocation of his parole.

(5) Grant such other and further relief as to the Court may seem appropriate and proper.

/s/ Timothy V. A. Dillon
1001 Fifteenth Street, N.W.
Washington 5, D. C.

Counsel for plaintiff by
appointment of this Court.

[Filed April 6, 1962]

MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS PLAINTIFF'S AMENDATORY COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Come now the defendants by their attorneys and respectfully move the Court for an order granting a summary judgment in their favor on the ground that no genuine issue as to any material fact exists, as more particularly appears from the affidavit of Joseph W. Vance, Parole Officer, United States Penitentiary, Leavenworth, Kansas, and the certified copies of official Bureau of Prisons documents, which are attached hereto and that the defendants are entitled to a judgment as a matter of law.

In the alternative, the defendants by their attorneys move the Court for an order dismissing the complaint on the ground that the controversy from which the complaint arose is now moot.

/s/ Burke Marshall
Assistant Attorney General

/s/ John F. Byerly
Attorney, Department of Justice

/s/ David C. Acheson
United States Attorney of Counsel

NOTICE

Please take notice that the points of law and authorities in support of the foregoing Motion are attached hereto. The rules of the District Court for the District of Columbia require that if you oppose the granting of the said Motion, you shall, within five days after service upon you, or such further time as the Court may grant or the parties hereto agree upon, file a memorandum of the points of law and authorities upon which you rely in support thereof and serve a copy thereof upon counsel for the defendants.

[Certificate of Service]

CERTIFICATE

DISTRICT OF COLUMBIA, ss:

I, James V. Bennett, Director of the Bureau of Prisons, Department of Justice, do hereby certify that I am acting as the administrative head of said Bureau of Prisons with official duties at Washington, D.C.

I further certify that I have lawful custody of the records and files of the said Bureau, including the records of the United States Board of Parole pertaining to individual prisoners.

I further certify that the following attached instruments are exact copies of the original documents relating to G.W. Stubblefield, No. 72560-L:

Summary of Parole Revocation Hearing dated January 23, 1961:

Interview with A.T. Miller, Parole Officer, United States Penitentiary, Leavenworth, Kansas, dated October 24, 1960.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Bureau of Prisons to be affixed this 6th day of April, 1962.

/s/ James V. Bennett
Director, Bureau of Prisons

[Rec'd. February 10, 1961]

U.S. BOARD OF PAROLE
TRANSCRIPT OF HEARING

Case of	STUBBLEFIELD, George William
Register Number	72560-L
Date of Hearing	January 23, 1961
Institution	U.S. P. Leavenworth, Kansas
Member Present	Mrs. Eva Bowring
Reporter Present	Mrs. Margaret Dempsey

Summary

George William Stubblefield appears as a MRV. This man had been serving a 17 year sentence for Post-Office Laws, Breaking and Entering and Robbery, MVTA and was MR May 11, 1956.

The Referral shows: Failure to Report for Supervision -- Alleged Murder -- Associating with Undesirable.

This man states in Interview that there is an action in Court contesting the right of the Board of Parole to bring him back and cause him to serve as a MRV. He admits that he never reported to the USPO. He said according to his certificate he didn't have to do this. He was another who refused to sign his MRV papers. He states he left here on May 11, 1956 and was turned over to the Nebraska authorities. He states he did approximately 20 months. The Court there commuted his sentence and he was taken into custody by the Massachusetts authorities about January 24, 1958. He claims he obtained his freedom by Court procedure and went back to the State of Nebraska. He believes the date was Nov. 8, 1959. As to the Murder which he states he was picked up for in Columbus, Nebraska, this being based on an indictment from Massachusetts on a Murder charge. "Two agents from that State came to Nebraska with extradition papers, but when they found out he (Stubblefield) was in Columbus at the time the Murder was supposed to have taken place, they turned him over to the Federal authorities and he was returned to this institution."

A report dated Sept. 19, 1960 relates that USPO Griffin advised that George William Stubblefield who was given a MR to a state detainer with supervision until Oct. 5, 1961 was released by the State on Oct. 14, 1959 but failed to report to the USPO to be placed under active mandatory release supervision. The USPO advised further that Stubblefield is now a fugitive wanted by local police on a charge of being implicated in the murder of a policeman, for which offense Edgar William Cook (74210-L) is presently being detained without bail.

Subject also states that Cook was a former co-defendant of his and further states that the fact that he was involved in this murder, "he implicated me but since I was in Columbus at the time the offense was supposed to have taken place, the Massachusetts authorities exonerated him" and merely requested that he be taken into custody by Federal authorities so that he would be available to appear as a witness against Cook in the event he was tried for the murder offense.

He still contends that there was no supervision to follow his release from Leavenworth; that the Federal authorities when they turned him over to the state custody, forfeited all jurisdiction. He was informed that this Member would recommend that he be held as MRV and I so do.

* * * *

MANDATORY RELEASE VIOLATOR'S STATEMENT

WARRANT ISSUED: 9-26-60 RE: STUBBLEFIELD, George W.

WARRANT EXECUTED: 10-19-60 Reg. No. 72560-L

Date Interviewed: 10-24-60

Q. Your name: is George William Stubblefield and your register number is 72560-L. Is that correct?

A. Yes.

Q. The record show that you were released from here May 11, 1956. Is that right?

A. I left here May 11, 1956, I was turned over to the Nebraska authorities. I did approximately 20 months. The court there commuted my sentence and I was taken into custody by the Massachusetts authorities about January 24, 1958.

Q. What happened?

A. I went back there and then obtained my freedom by court procedure. I went back to the State of Nebraska, going through Columbus. I believe this took place about November 8, 1959.

Q. It is noted that when you left the institution, you refused to sign your mandatory release papers. Is that right?

A. At that time, I was claiming that I would not have to report to the Federal Government since I was to be taken into custody by state authorities.

Q. The Referral states that you failed to report for supervision. Is that right?

A. Well, I did not do any reporting. I feel that I definitely did not have any federal supervision, since the state took me into custody.

Q. It also indicated that you were charged with alleged murder and associating with undesirables. What do you have to say about this?

A. I was picked up in Columbus, Nebraska by Federal Authorities on a fugitive from Justice warrant, this being based on an indictment from Massachusetts on a Murder Charge. Two agents from that state came to Nebraska with extradiction papers, but when they found out I was in Columbus at the time the murder was supposed to have taken place, they turned me over to the federal authorities. I was declared an Conditional Release Violator and brought to this institution.

Q. The referral points out that you were charged with being implicated in the murder of a policeman and that an Edgar William Cook former inmate of this institution was being held also for this offense.

A. Cook was a former co-defendant of mine and the fact that he was involved in this murder, he implicated me, but since I was in Columbus at the time the offense was supposed to have taken place, the Massachusetts authorities exonerated me and merely requested that I be taken into custody by Federal Authorities so that I would be available to appear as a witness against Cook in the event he was tried for the murder offense.

Q. You then feel that you definitely did not violate?

A. I certainly do. I feel that the Parole Board waived all their rights in me when I was taken into custody by Nebraska.

Q. As I recall, You were specifically informed that you were definitely under conditional release supervision at that time and that if you were released from state custody, you should report to the nearest probation officer and advise him of your situation and submit reports as requested.

A. Well, I still contend that there was no supervision to follow, that the Federal Authorities, when they turned me over to state custody, forfeited all jurisdiction.

Q. After you were released from the Massachusetts authorities, that was the time you should have reported to the probation officer. Instead of doing this, what did you do?

A. I left Massachusetts, hitch-hiked most of the way, arrived in Nebraska sometime around November 1, 1959. I didn't have to hitch-hike all the way back. I had about $120.00. I was doing alright on the outside. I still see no reason why I was declared a violator.

Q. Do you have anything further to say concerning this violation?

A. No.

STATEMENT: A member of the United States Board of Parole will be at the institution sometime during the month of January. When you have your interview, you will be given an opportunity to furnish additional information concerning this violation if you wish to do so.

/s/ A.T. Miller
Parole Officer
Classification and Parole

U.S. PENITENTIARY
Leavenworth, Kansas

Date: Dec. 22, 1961

Re: George Stubblefield
No: 72560

I, the undersigned, do hereby swear and affirm that on the above date I advised the above inmate of his right to be represented by counsel and/or witnesses at a Revocation Hearing. I submitted to him a statement whereby he could indicate whether or not he desired to be represented by counsel and/or witnesses, and he refused to sign such statement.

/s/ Joseph Vance
Parole Officer

Attest:

/s/ E. J. Johnson, Parole Officer

Authorized by the Act of July 7, 1955,
to administer oaths (18 U.S.C. 4004)

[Filed April 6, 1962]

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE, PURSUANT TO RULE 9(h)

Defendants contest that there is no genuine issue as to the following material facts:

1. Plaintiff was convicted in the District of Massachusetts on April 4, 1945, and was sentenced to an aggregate term of 17 years for robbery of a post office and for violation of the Dyer Act.

2. He was released on conditional release under this sentence on May 11, 1956.

3. A warrant charging him as a conditional release violator was issued on September 26, 1960, and he was arrested under this warrant on October 19, 1960.

4. He was given a hearing as a conditional release violator at the Leavenworth Penitentiary by a member of the United States Board of Parole on January 23, 1961.

5. He did not have the assistance of counsel at this revocation hearing nor was he advised of his right to the assistance of counsel.

6. Conditional release was revoked on February 16, 1961.

7. Subsequent thereto, plaintiff was offered a new hearing with the right to the assistance of counsel and also the right to present witnesses in his own behalf if he so desired.

8. Plaintiff did not avail himself of this offer.

/s/ Burke Marshall
Assistant Attorney General

/s/ John F. Byerly
Attorney, Department of Justice

/s/ David C. Acheson
United States Attorney of Counsel

[Filed May 1, 1962]

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, TO DISMISS

Comes now the Plaintiff by his attorney and respectfully moves the Court to deny the Motion for Summary Judgment, or, in the Alternative, to Dismiss filed herein on grounds that (1) Plaintiff did not violate the terms of his release; (2) even if a condition of reporting to a Parole Officer was imposed, its violation under the peculiar facts of this case was not a sufficient ground for its revocation; (3) said revocation was arbitrary and capricious; and (4) was void because of the Parole Board's failure to advise Plaintiff of his right to be represented by counsel at the revocation hearing.

/s/ Timothy V.A. Dillon

* * *

Counsel for Plaintiff by
Appointment of this Court

[Filed May 10, 1962]

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS

At a hearing on this motion on May 8, 1962, the question was raised by plaintiff's counsel whether the plaintiff may have innocently neglected to report to his Probation Officer in the belief that he was not required to do so, this failure to report having been a basis for revocation of the plaintiff's conditional release by the United States Board of Parole. Following argument on the motion, the court took the matter under advisement.

It was not until May 9, 1962 that defendants' counsel received a copy of the plaintiff's "Opposition to Motion for Summary Judgment

or, in the Alternative, To Dismiss", in which plaintiff's counsel has developed this question which was also raised at oral argument; the delay in receipt of this pleading was occasioned by misrouting of the document in the Department of Justice.

This supplemental memorandum is submitted in support of the Government's contention urged in oral argument that there is no question but that the plaintiff wilfully violated his conditions of release in a manner fully justifying revocation of release, and in answer to the plaintiff's pleading received on May 9, 1962.

ARGUMENT

I

Plaintiff's first contention that reporting to his Parole Officer was not in fact made a condition of his release is completely refuted by the Violator's Statement filed with the defendants' motion in this case. In addition there is attached herewith a certified copy of the Certificate of Conditional Release, executed by the Parole Executive, Mr. Joseph N. Shore. In accordance with the general procedure in cases wherein released convicts refuse to sign their Certificates of Conditional Release, the Parole Officer at the prison read and explained to the plaintiff the rules and regulations on the reverse of the certificate after he refused to sign his name beneath the twelve numbered conditions or rules of release. In further accordance with this procedure, Parole Officer A.T. Miller subscribed his signature on the face of the certificate to this statement: "Refused to Sign Certificates. The rules and regulations on the reverse side were read to and thoroughly explained to GEORGE WILLIAM STUBBLEFIELD after he refused to sign the certificate." Thus there can be no question but that the plaintiff was informed of the reporting requirement.

Moreover, as previously noted, in the Violator's Statement dated October 24, 1960 filed with the defendants' motion, the plaintiff was directly questioned concerning his having been informed that upon being released from state custody he should report to the nearest

probation officer (this is in accord also with instructions on the back of the Certificate of Conditional Release attached herewith). The plaintiff raised no question that he had not been informed of the reporting requirement; he merely explained he did not report because he contended that he did not have to.

II

The plaintiff's second contention in his opposition to the Government's motion is that conceding that the condition of reporting was imposed, violation of the reporting requirement was not a sufficient ground for revocation of his release. The plaintiff's claim is that the violation was "innocent and technical." His contention was that the Federal Government had forfeited all jurisdiction over him; consequently he seems now to claim to have believed that the statement of the conditions of his release which were read to him was meaningless; from this he argues that he was ignorant or innocent of the applicable law and cannot be considered a violator. The statute (18 U.S.C. 4164) requires that "prisoners released before expiration of their full terms less good time deductions shall be treated as if released on parole and subject to all provisions of law relating to the parole of United States prisoners until expiration of the maximum term or terms . . . . This section shall not prevent delivery of a prisoner to the authorities of any state otherwise entitled to his custody." No argument is required to refute plaintiff's claim of ignorance of the law which was explained to him and which he refused to accept or believe.

There is nothing of a technical nature in a failure to report in accordance with the requirements and the conditions of release. The reporting requirement is the chief control that the Board of Parole uses to insure that the paroled or conditionally released prisoners are conducting themselves as law-abiding citizens during the unexpired remainder of their prison terms. Condition Number 3 of the plaintiff's

release confined him to the District of Massachusetts and the conditions of the report made it plain that upon release from state prison he was to report to the nearest probation officer; his release actually occurred in Massachusetts.

III

The plaintiff's third claim is that revocation of his release was arbitrary and capricious in that he alleges it was effected to aid agents of the Commonwealth of Massachusetts "to evade the extradition laws." No proof whatsoever that an improper agreement existed has been offered by the plaintiff. It should be noted however that in the paragraph preceding the place for the plaintiff's signature on his statement of conditional release terms (which he refused to sign) it is stated:

> I understand that my continuance under supervision rests in the discretion of the United States Board of Parole and that if I do not demonstrate capacity and willingness to fullfill the obligations of a law-abiding citizen, or if my continuance under supervision becomes incompatible with the welfare of society, I may be retaken on a warrant issued by the Board of Parole and reimprisoned pending a hearing to determine if my conditional release should be revoked.

The matter concerning which the plaintiff states that he refused to return to Massachusetts as a witness was a robbery and murder of a policeman; it is clear that plaintiff's refusal to cooperate with the law enforcement authorities of Massachusetts in this matter, in which he had been accused as a principal defendant, would alone have furnished ample grounds for revocation of his conditional release.

IV

Plaintiff's fourth contention, that the revocation of his release was void because of the failure of the Parole Board to advise him of the right to be represented by counsel at his revocation hearing, has been answered at oral argument.

Since the plaintiff was not advised of his right to counsel and to produce voluntary witnesses to testify on his behalf at his parole revocation hearing at the penal institution, he was entitled to a new revocation hearing with counsel and witnesses if he so desired. See Robbins v. Reed, 106 U.S. App. D.C. 51, 269 F. 2d 242 (1959); Hurley v. Reed, 288 F. 2d 844; Glenn v. Reed, 110 U.S. App. D.C. 85, 289 F. 2d 462; Reed v. Butterworth, ___ U.S. App. D.C. ___, 297 F. 2d 776.

Since the Glenn and Butterworth decisions, the Board has amended its rules to provide that all persons whose paroles or conditional releases have been previously revoked shall be offered the opportunity to have a rehearing with their attorneys and/or voluntary witnesses having relevant and material information. Consequently, plaintiff has been offered a new hearing with counsel and witnesses. However, plaintiff has not availed himself of this offer. See the affidavit of Joseph V. Vance, Parole Officer, United States Penitentiary, Leavenworth, Kansas, dated December 22, 1961.

This Court has held on numerous occasions that the offer to conduct a rehearing with counsel present would either moot the cause of action or correct the original error. Morgan v. Reed, No. 1208-60; Barnes v. Reed, No. 1259-60; Johnson v. Reed, No. 1109-60; Robinson v. Reed, No. 1581-60; Reneau v. Reed, No. 1508-60; Richmond v. Reed, No. 1536-60; Magby v. Reed, No. 790-60; Staples v. Reed, No. 1537-60; Tarkington v. Reed, No. 1581-60; Dauback v. Reed, No. 1489-60; Penny v. Reed, 1432-60; Thomas v. Reed, No. 1378-60; Brooks v. Reed, No. 1490-60.

It is true that the Court of Appeals for this Circuit in Glenn v. Reed, supra ordered the prisoner released though he had been afforded the opportunity to have a rehearing with counsel present. The Court of Appeals however later amended its original opinion to establish plainly that its order to release the prisoner was based upon the narrow, factual background of that particular case, viz. that the complaint upon

which the revocation of Glenn's parole was based had been completely retracted by the complainant. Obviously no such situation exists in plaintiff's case wherein it is not disputed that he failed to report to his parole officer, and wherein he admits his refusal to cooperate with Massachusetts authorities in investigation of a robbery and murder case in which he had been implicated.

CONCLUSION

It is submitted that the action of the Board of Parole in revoking plaintiff's parole was not arbitrary or capricious and that the offer of a new hearing with counsel and voluntary witnesses cured the original procedural error.

/s/ Burke Marshall
Assistant Attorney General

/s/ Joseph A. Barry
Attorney, Department of Justice

/s/ David C. Acheson
United States Attorney of Counsel

[Certificate of Service]

[Filed May 10, 1962]

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington

I, Joseph N. Shore, Parole Executive, United States Board of Parole, Washington, D.C., hereby certify that the attached copy of a Certificate of Conditional Release, issued in the case of George William Stubblefield, Register No. 72560-L, is an exact copy of the original certificate as contained in his Washington File Record.

Witness, the undersigned this 8th day of May, 1962, at Washington, D.C.

/s/ Joseph N. Shore
Parole Executive

[Filed May 10, 1962]

THE UNITED STATES BOARD OF PAROLE
Washington, D.C.

CERTIFICATE OF CONDITIONAL RELEASE

It having been certified to this board that George William Stubblefield 72560-L now confined in the United States Penitentiary - Leavenworth, Kansas (2040sgs &113igt) is entitled to 2153 days deduction from the maximum term of sentence imposed as provided by law, and is to be released from this institution under said sentence on May 11, 1956; and it being provided by Section 4164, Title 18, U.S.C., as amended, that such person shall upon release be treated as if released on parole and continue on parole until expiration of the maximum term or terms of sentence, less 180 days;

It is ordered that said person be released under the conditions set forth on the reverse side of this certificate, and be subject to such conditions until expiration of the maximum term or terms of sentence, less 180 days, on 10-5-61.

It is to be understood that this certificate in no way lessens the obligation to satisfy payment of any fine included in the sentence; nor will it prevent delivery of said person to authorities of any State otherwise entitled to custody.

Given under the hand and seal of the United States Board of Parole this 20th day of April, 1956.

REFUSED TO SIGN CERTIFICATES

The rules and regulations on the reverse side were read to and thoroughly explained to GEORGE WILLIAM STUBBLEFIELD after he refused to sign the certificates.

/s/ A.T. Miller
Parole Officer

UNITED STATES BOARD OF PAROLE

By: /s/ Thomas O. Girile
Parole Executive. (DG)

UNITED STATES BOARD OF PAROLE

The above-named prisoner was released on this 11th day of May, 1956.

/s/ C. H. Looney, Warden

[Reverse Side of Certificate]

STATEMENT OF THE CONDITIONS UNDER WHICH
THIS CERTIFICATE OF CONDITIONAL RELEASE IS ISSUED

The following conditions are to become operative immediately:

This Certificate of Conditional Release will become effective on the date shown on its face after the following conditions are accepted by the prisoner as evidenced by his signature at the end thereof, duly witnessed:

1. That I will proceed directly to designated district and upon arrival I will report in person immediately to my Parole Adviser, and to the United States Probation Officer responsible for my supervision. The latter will in turn advise the Parole Executive, Department of Justice, Washington, D.C., that I have reported to my Parole Adviser on the Arrival Notice provided for that purpose.

Adviser_____

Probation Officer_____

2. That I will commit no crime.

3. That I will remain within the limits fixed in the Certificate of Conditional Release, to wit:

United States District: Massachusetts

If I have good cause to leave these limits I will first obtain written permission from the Probation Officer.

4. That I will, between the first and third days of each month, and on the final day of my sentence, make a full and truthful written report to the Probation Officer, upon the form provided for that purpose and that I will submit each such report first to my Parole Adviser for certification and then mail or deliver same to my United States Probation Officer.

5. That I will work regularly at a lawful occupation and support my dependents, if any, to the best of my ability. When out of work I shall notify my Probation Officer at once.

6. That I will live and work at the place stated in my release plan and will not change employment until after I have permission in writing to do so from my Probation Officer. In emergencies I will get in touch with my Probation Officer at once.

7. That I will promptly and truthfully answer all inquiries directed to me by the United States Board of Parole or by the United States Probation Officer.

8. That I will immediately get in touch with my Probation Officer if I am arrested or questioned by law-enforcement officers regarding any crime or suspected crime.

9. That I will direct a communication to the Parole Executive, United States Board of Parole, Department of Justice, Washington, D.C., if at any time it becomes necessary to communicate with my Parole Adviser or Probation Officer for any purpose and neither is accessible.

10. That I will not purchase, possess, use, consume, or administer narcotic drugs or marihuana in any form, or frequent places where such articles are unlawfully sold, dispsnsed, used, or given away.

11. That I will not associate with persons having a criminal record, bad reputation, nor with those engaged in questionable occupations.

12. That I will not have in my possession any firearm or other dangerous weapon without the written permission of my Probation Officer.

•

I understand that my continuance under supervision rests in the discretion of the United States Board of Parole and that if I do not demonstrate capacity and willingness to fullfill the obligations of a law-abiding citizen, or if my continuance under supervision becomes incompatible with the welfare of society, I may be retaken on a warrant issued by the Board of Parole and reimprisoned pending a hearing to determine if my conditional release should be revoked.

I have read, or had read to me, the foregoing conditions governing my release. I fully understand them and I will abide by and strictly follow them. I also understand that if I violate them in any manner I may be recommitted.

_____ _____

(Name) (Register No.)

Witnessed:_____

_____ Dated_____

(Title)

_____

[Filed May 29, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G.W. STUBBLEFIELD, Plaintiff, v. HONORABLE ROBERT F. KENNEDY, UNITED STATES ATTORNEY GENERAL Defendant,	)	Civil Action No. 1664-61

ORDER

This Court, having considered the defendant's Motion for Summary Judgment or, in the alternative, Motion to Dismiss, and it appearing to the Court that no genuine issue as to any material fact exists and the defendant is entitled to a judgment as a matter of law, it is by the Court this 29th day of May, 1962;

ORDERED that the defendant's Motion for Summary Judgment be, and it hereby is granted.

/s/ Edward A. Tamm
JUDGE

[Certificate of Service]

[Filed June 6, 1962]

NOTICE OF APPEAL

Notice is hereby given this 1st day of June, 1962 that G.W. Stubblefield, Plaintiff hereby appears to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 28th day of May, 1962 in favor of United States Government against said Plaintiff.

/s/ G.W. Stubblefield
